

ERIC AND IDA MAE HJERPE

AUGUST 22, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 2074]

The Committee on the Judiciary, to which was referred the bill (H.R. 2074) for the relief of Eric and Ida Mae Hjerpe, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to pay to Eric Hjerpe and Ida Mae Hjerpe, of Sunnyvale, Calif., the sum of \$1,096.48 in full settlement of their claims against the United States based on erroneous payment they made in connection with their income tax liability for 1952.

STATEMENT

The Department of the Treasury in reporting to the Congress on the bill has commented as follows:

The records of the Internal Revenue Service disclose that on January 28, 1957, the taxpayers filed a claim for refund of 1952 income tax in the amount of \$1,096.48. This claim was supported by a declaration by the taxpayers that Eric Hjerpe was sick and absent from work through 1952 and that the amount of "\$5,200 received from wages (52 weeks, \$100 per week under the wage continuation plan of the First National Bank of Chicago, Ill.," should have been excluded

from income. This claim for refund was rejected because the claim was not filed within the 3-year period of limitations prescribed by law.

The taxpayers' claim is based upon section 22(b)(5) of the Internal Revenue Code of 1939 which provided an exclusion from gross income of amounts received "through accident or health insurance." The issue whether section 22(b)(5) of the 1939 code applied to amounts received as sick pay from uninsured wage continuation plans was not settled until 1957. In 1952 the court of appeals, in the case of *Epmeier v. United States* (199 F. 2d 508 (7th Cir. 1952)) held that such payments were excludable from gross income as amounts received through "health insurance."

For some period of time the Internal Revenue Service did not believe that the *Epmeier* case correctly interpreted the law and rejected claims for refund filed on the basis of the *Epmeier* case. However, in December 1954 the field offices of the Internal Revenue Service were advised by the national office that there would be no objection to having claims for refund with respect to disability payments, similar to those involved in the *Epmeier* case, held in suspense rather than disallowing such claims as had been the prior practice. This "suspense" procedure was established in order that taxpayers who filed such claims would not have their claims automatically disallowed and thereby be compelled to litigate the issue within the 2-year period prescribed by law for appealing from the disallowance of refund claims. At the time this suspense procedure was adopted, the taxpayers had more than 1 year in which to file a timely claim for refund. However, their claim for refund was not filed until January 28, 1957, which date was almost 1 year after the expiration of the 3-year period of limitations prescribed by law.

In 1957 the Supreme Court of the United States in the case of *Gordon P. Haynes, et ux. v. United States* (353 U. S. 81) followed the decision in the *Epmeier* case and held that amounts received through an uninsured employees sickness benefit plan were excludable from income as "health insurance."

Because of the large number of taxpayers whose timely claims for refund filed on the basis of the *Epmeier* case had been rejected by the Internal Revenue Service prior to the decision of the United States Supreme Court in the *Haynes* case, Congress enacted a provision granting general relief on a nondiscriminatory basis to such taxpayers. This relief provision is contained in section 98 of the Technical Amendments Act of 1958 (Public Law 85-866) which was approved by the President on September 2, 1958. However, this provision grants relief only to those taxpayers who initially filed timely claims for refund but who failed to protect their rights by filing a suit in court within 2 years after disallowance of the claims. This provision does not grant relief to taxpayers such as Eric and Ida Mae Hjerpe who did not file timely claims for refund.

The instant bill is similar to H.R. 6335 (86th Cong., 1st sess.) for the relief of Mrs. Lourene O. Estes, from which the President withheld his approval on September 22, 1959. In his memorandum of disapproval, the President stated:

"During the last Congress, I approved legislation designed to grant general relief, on a nondiscriminatory basis, to taxpayers who had received disability pay which was excludable from gross income under the Supreme Court decision. This general legislation does not provide relief for taxpayers, such as Mrs. Estes, who did not attempt to protect their rights by filing timely claims for refund.

"The statutory period of limitations, which the Congress has included in the revenue system as a matter of sound policy, is essential in order to achieve finality in tax administration. A substantial number of taxpayers paid income tax on disability payments received by them and failed to file timely claims for refund. Accordingly, to grant special relief in this case, where a refund was not claimed in the time and manner prescribed by law, would be to discriminate against such other similarly situated taxpayers and to create an undesirable precedent."

In view of the foregoing, the Department is opposed to the enactment of H.R. 2074.

In favorably reporting the bill the Committee on the Judiciary of the House of Representatives commented in House Report No. 1985 as follows:

The claimant, Eric Hjerpe, was sick and absent from work through 1952 and the amount he received from his employer, the First National Bank of Chicago, Ill., was \$5,200 computed at the rate of \$100 per week for 52 weeks. Said amount was paid to him under a wage continuation plan and should have been excluded from income. However, the claimant declared such receipt as income and paid the aforesaid amount as a tax.

A subcommittee of the House Judiciary Committee received evidence on the merits of this bill and was informed by affidavit submitted to it that Mr. Hjerpe underwent a sympathectomy in 1947, a rare nerve-cutting operation to relieve very high blood pressure. In December 1951 he developed hypertensive cardiovascular disease with left ventricular failure and tachycardia which prevented him from returning to work. On January 1, 1953, medical authorities for the employer, the aforesaid First National Bank of Chicago, Ill., and the Equitable Life Assurance Society found him to be totally and permanently disabled. He was only 45 years of age when he had to retire and for years he "was just too sick to care about anything" (quotation is taken from claimant's personal sworn statement submitted to the subcommittee), and his illness caused him to file his claim 10½ months late.

The committee is of the opinion that the claimant has a meritorious claim. The Secretary of the Treasury opposes the enactment of this legislation and cites the veto message

of the President under date of September 22, 1959, relative to the bill H.R. 6335 (86th Cong., 1st sess.) for the relief of Mrs. Lourene O. Estes, which particularly stated, among other things, the running of the statute of limitations and the failure of the claimant to timely file her claim for refund.

The committee wishes to indicate that opposition was also raised by the Treasury Department on the basis of failure to make a timely claim for refund and the running of the statute of limitations relative to the bill H.R. 7745 (86th Cong., 1st sess.) for the relief of Mrs. Willie Soher, which also concerned an overpayment in her income tax. This bill was approved by the President on September 22, 1959 (Private Law 86-234).

There appears to be no question that the payment made by the claimants to the Government as a purported tax was in essence and in fact not due to the Government. The money does not constitute tax money; it was paid in error and received without right. The committee is of the opinion and concludes that the claimants are entitled to the relief sought and accordingly recommends that the bill be considered favorably.

The committee believes that the bill, as recommended by the Committee on the Judiciary of the House of Representatives, and as passed by the House of Representatives, is meritorious and recommends it favorably.

Attached and made a part of this report is a letter from the Department of the Treasury, dated March 1, 1960.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, March 1, 1960.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
Old House Office Building, Washington, D. C.*

MY DEAR MR. CHAIRMAN: This is in response to your request of January 19, 1959, for this Department's view on H.R. 2074 (86th Cong., 1st sess.) entitled "A bill for the relief of Eric and Ida Mae Hjerpe."

H.R. 2074 would direct the Secretary of the Treasury to pay to Eric Hjerpe and Ida Mae Hjerpe, of Sunnyvale, Calif., the sum of \$1,096.48 in full settlement of all their claims against the United States for refund of income taxes erroneously paid for the calendar year 1952. The bill recites that such erroneous payment, and the failure to make timely application for the refund thereof, were solely attributable to the serious physical disability of Eric Hjerpe.

The records of the Internal Revenue Service disclose that on January 28, 1957, the taxpayers filed a claim for refund of 1952 income tax in the amount of \$1,096.48. This claim was supported by a declaration by the taxpayers that Eric Hjerpe was sick and absent from work through 1952 and that the amount of "\$5,200 received from wages (52 weeks, \$100 per week) under the wage continuation plan of the First National Bank of Chicago, Ill.," should have been excluded from

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In view of the foregoing, the Department is opposed to the enactment of H.R. 2074.

The Bureau of the Budget has advised the Treasury Department that there is no objection to the presentation of this report.

Sincerely yours,

JAY W. GLASMANN,
Assistant to the Secretary.

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